Appendix 1 for the book, Whatcha Gonna Do With Whatcha Got?
By W. Robert Daum, CSPG aka Pastor Bob Daum

The Unauthorized Practice of Law: Missouri Supreme Court Decision of August 20, 1996 [Abridged]

NOTE: Pastor Bob Daum said, "I first learned about this Court Decision when it came into my email inbox from the General Conference of Seventh-day Adventists Department of Planned Giving & Trust Services. This 1996 Court Decision had the effect of causing a significant company to go out of business. I've given you the decision with the portions underlined that we believe were pertinent to our work. For the purposes of this book, I downloaded it from 19960820 © 1998 Versus Law Inc. and paid their fee [a nominal amount].

PERSONAL NOTE: When I first read this in 1996, I felt great relief as if this were an answer to prayer —a gift from heaven because of the similarities of the offender's practices when compared to our practices in the work of Planned Gift development and my growing discomfort with ours.
W. R. Daum

The Case ID: 08/20/96 MID-AMERICA LIVING TRUST ASSOCIATES, INC.
[1] SUPREME COURT OF MISSOURI
[2] No. 77600
[3] 1996 MO.22037 http://www.versuslaw.com, 927 S.W. 2d855
[4] August 20, 1996
[5] IN RE: MID-AMERICA LIVING TRUST ASSOCIATES, INC., ET AL., RESPONDENTS,
[6] Inf: John E. Howe, Carl Schaeperkoetter, Jefferson City, Missouri
[7] Resps: William R. Pearcy, Chesterfield, Missouri
[8] William Ray Price, Jr., Judge All concur.
[9] The opinion of the court was delivered by: Price

[10] This action was brought by the Chief Disciplinary Counsel (CDC) against respondents Mid-America Living Trust Associates, Inc., and Robert Dillie. The CDC seeks a declaration that respondents have engaged in the unauthorized practice of law and injunctive relief. The CDC has alleged, in particular, that respondents have: 1) rendered legal advice to individuals concerning the need for and advisability of various types of living trusts; 2) gathered information from individuals for use in determining what type of trust is appropriate and in preparing trust documents; 3) prepared trust documents for individuals; 4) prepared other legal documents including wills and durable powers of attorneys for individuals; and 5) that Mid-America charged and collected fees for these services.

[11] This Court has the inherent authority to regulate the practice of law. Mo. Const. art. V, 1. In re First Escrow, Inc., 840 S.W.2d 839, 842 (Mo. Banc 1992); Reed v. Labor and Industrial Rel. Com'n, 789 S.W.2d 19, 20 (Mo. Banc 1990); In re Thompson, 574 S.W.2d 365, 367 (Mo. Banc 1978). I.

[12] The parties have stipulated to the following facts. Mid-America is a closely-held Missouri corporation which prepares trusts, pour-over wills, durable and general powers of attorneys for individuals. Its president and 95 percent shareholder is Robert R. Dillie.

[13] Mid-America works through trust associates that it defines as "independent contractors" to obtain clients. The trust associates are usually individuals with a financial planning business, insurance business, or stock brokerage business who have learned of Mid-America's services through education programs sponsored by Mid-America or advertising in trade publications. Trust associates may attend "Estate-Planning School", a training seminar put on by Mid-America, and all have signed a standard contract agreement. The contract includes a clause instructing the contractor to "not give any tax or legal advice to clients; make, alter or discharge any wills or trusts, incur any liability on behalf of Mid-America Living Trust Associates."

[14] The "trust associate" who recommends and sells a living trust also gathers personal and financial information from the client by completing a workbook provided by Mid-America. Clients may choose their own attorney or an attorney recommended by Mid-America who has agreed to review trust documents. If a Mid-America review attorney is selected by the client, the trust associate directs the client to make out two checks: one to Mid-America and one to the review attorney. The workbook and the checks are mailed to Mid-America.

[15] Mid-America paralegals contact the client and verify the information in the workbook. The paralegals, based on input from in-house counsel, the review attorney, or personal experience, decide which form of trust would be the most appropriate and draft the initial documents from blank prototypes. The prototypes include forms for single and married persons in community and non-community property states. The marital trust prototype includes joint marital trust documents and separate trust documents. There are documents for estates having tax consequences and forms for pour-over wills, durable and general powers of attorney, health care declarations, and health care powers of attorney.

[16] The trust documents, workbook, and attorney check are then mailed to the review attorney. The review attorney sometimes communicates directly with the client, but not always. The paralegal makes changes if directed to by the attorney. The documents are then mailed to the trust associate, who delivers the documents for execution by the client. Mid-America also provides assistance in retitling assets and preparing quitclaim deeds.

[17] A majority of the 125 to 200 estate-planning packages prepared each month by Mid-America are for execution in Florida, Texas, Arizona, California, and Hawaii. Since its creation in 1989, approximately 250 trusts have been prepared by Mid-America for execution in Missouri. Mid-America has utilized three Missouri attorneys as review attorneys. The review attorneys have charged clients fees ranging from $100 to $250. The clients typically pay between $595 and $1,995 for Mid-America's services. Mid-America pays the trust associates a commission for each trust they recommend to Mid-America in accordance with a written schedule. A copy of this schedule was submitted to the Master as Exhibit C of the parties' stipulation and is appended to this opinion.

[18] We derive other facts from the joint exhibits submitted by the parties. In the first page of the Training and Procedures Manual provided to all trust associates, Mr. Dillie "welcomes" Mid-America's trust associates to "our 'Family' of Associates" and encourages them "in [their] new business adventure - great success in the living trust industry." The manual and a training video alone, according to the manual, explain what a trust is, why trusts are beneficial, how to complete the estate plan, and, particularly, "how to make a successful sales presentation and close a sale." The manual explains how to fill out the workbook and gives a brief synopsis of the legal issues the client should be aware of when selecting a trustee, personal representative, conservator, guardian, or the person to designate as a durable power of attorney. The manual explains different ways to distribute property or exclude relatives from the trust, as well as other important information. Significant differences between state laws are also highlighted.

[19] The manual tells the trust associates to encourage the clients to choose one of Mid-America's review attorneys:

[20] Have your clients list the attorney of their choice - for obvious reasons we hope they choose our recommended attorney - on the line provided.

[21] (In the bizarre instance where the clients want their own attorney, explain that the trust will have to be sent to that attorney for review and they will be responsible for that attorney's fees, which could be substantially more than $100. If they persist, understand that this trust, if sent to their attorney, will very likely be canceled - since their attorney will probably offer to do the trust for them.)

[22] The manual also instructs the trust associates not to share the name of the review attorney with the client unless they specifically request it, to avoid "any unlawful solicitation on behalf of the attorney." According to one of the trust associates questioned, the clients are instructed to make their checks out to "Review Attorney." The clients are instructed to sign an "Attorney Representation" form stating that the client recognizes “[a] potential conflict of interest between the Corporate Attorney’s preparation of my/our estate documents and his representation of Mid-America exists and I/We understand that the representative is not an attorney or certified tax authority, and I have been advised to consult an attorney and/or tax accountant for tax and legal advice.”

[23] II.

[24] The Honorable Floyd McBride, Circuit Judge, was appointed Master in this case. Judge McBride entered an extensive thirteen page Revised Report of Master, Findings of Fact and Conclusions of Law. Judge McBride's ultimate Conclusion was:

[25] Your master finds that a permanent injunction is appropriate under all of the circumstances, particularly since Mid-America intends to continue doing trust business in this state and injunctive relief is necessary to insure that respondent's business practices comply with the clear rule of law established by this Court in [State ex inf. Miller v. St. Louis Union Trust Co., 335 Mo. 845, 74 S.W.2d 348 (Mo. banc 1934)]. Further, reasons grounded in the public welfare call

for strict enforcement of the subject statutes against unlicensed persons who engage in the "law business." Miller, supra, 74 S.W.2d at 359.

[26] The undersigned master recommends that the conduct to be enjoined shall Include:

[27] 1. The soliciting, counseling, recommending and selling of trusts to Missouri residents by Mid-America's nonlawyer agents, servants and employees;

[28] 2. The drawing, preparing or assisting in the preparation of trust workbooks, trusts, wills and powers of attorney for residents of this state by Mid-America's nonlawyer agents, servants and employees without the participation or direct supervision of a licensed attorney; and

[29] 3. The charging and collecting of fees for the services enjoined hereinabove.

[30] The undersigned master further recommends that the information be dismissed as to Respondent Robert R. Dillie.

[31] III.

[32] It is the responsibility of the judiciary to determine what constitutes the practice of law, both authorized and unauthorized. Mo. Const. art. V, □ 1; Reed, 789 S.W.2d at 20. In exercising this responsibility, we recognize that:

[33] The duty of this Court is not to protect the Bar from competition but to protect the public from being advised or represented in legal matters by incompetent or unreliable persons.

[34] In re First Escrow, 840 S.W.2d at 840 (quoting Hulse v. Criger, 363 Mo. 26, 247 S.W.2d 855, 857-858 (Mo. 1952)). The consequences of incompetent representation are especially dangerous because they are often invisible for many years, but then cause great hardship and expense, such as when a deed, will, or trust is found to be ineffective or not to achieve the results originally intended. Accordingly, we seek to allow only those who have been found by investigation and examination to be properly prepared and skilled to practice law and who demonstrate that they conform to higher standards of ethical conduct necessary in fiduciary and confidential relationships. Hulse, 247 S.W.2d at 858; In re Thompson, 574 S.W.2d 365, 367 (Mo. banc 1978).

[35] The legislature has also determined that the unauthorized practice of law is a danger to the people of Missouri. It has made the "practice of law" and engaging in "law business" by unlicensed individuals a misdemeanor crime. □ 484.020. *fn1

[36] The "practice of law" is defined as:

[37] The "law business" is defined as:

[38] Although the "practice of law" includes acts done both in and out of court, "law business" in particular implies that a nonlawyer has "held himself out" in a business "by repeated acts" or "by the exaction of a consideration" in which he acts in the same capacity as a lawyer. *fn2 Liberty Mut. Ins. Co. v. Jones, 344 Mo. 932, 130 S.W.2d 945, 955 (Mo. banc 1939). These statutes are

"primarily intended to protect the public from the rendition of certain services, deemed to require special fitness and training on the part of those performing the same, by persons not lawfully held to possess the requisite qualifications." State ex inf. Miller v. St. Louis Union Trust Co., 335 Mo. 845, 74 S.W.2d 348, 357 (Mo. banc 1934).

[39] This Court has attempted to maintain a "workable balance" in these matters between the public's protection and the desired efficiency and economic benefits that result from a competitive marketplace. We allow non-attorneys to perform routine services, ancillary to other valid activities and without compensation, such as the filling in of blanks in approved form real estate documents. Hulse, 247 S.W.2d at 862; In re First Escrow, Inc., 840 S.W.2d at 846. Also, non-attorneys may sell generalized legal publications and "kits", so long as no "personal advice as to the legal remedies or consequences flowing therefrom" is given. In re Thompson, 574 S.W.2d at 369. The need for public protection demands the strictest scrutiny when the exercise of judgment and discretion is applied to the particular legal needs of an individual.

[40] III.

[41] The marketing and drafting of living trusts and other related legal instruments by non-lawyers is not unique to Missouri. It is a practice that has been the subject of substantial criticism by groups appearing before the Senate Special Committee on Aging, *fn3 102d Cong., 2d Sess. (Sept. 24, 1992). It also has been the subject of criticism by legal commentators. Trust marketing schemes have been rejected repeatedly by court decisions and state ethic opinions as the unauthorized practice of law.

[42] Generally, critics argue three types of harm develop from trust marketing schemes by non-lawyers. First, unregulated solicitation by non-lawyers allows for abusive marketing practices, particularly aimed at the elderly. Second, there is no assurance of competency by non-lawyers. Third, a conflict of interest exists between those who benefit from the sale of a particular legal instrument and the client for whom that legal instrument may not be appropriate.

[43] A. Legal Commentators

[44] [Omission] "The public, particularly senior citizens, are told that the living trust is a cure-all for the problems entailed in asset management and wealth transfer, a claim with no more validity than the curative claim for snake oil." Gibbs, at 193; see also People v. Laden, 893 P.2d 771, 771 (Colo. 1995) ("The nonlawyer who sold the trust told the couple it would cost their sons $65,000 to settle their estate through probate and the courts."); Mahoning County Bar Ass'n v. The Senior Serv. Group, Inc., 66 Ohio Misc. 2d 48, 642 N.E.2d 102, 103 (Ohio Bd. Unauth. Prac. 1994) (Trust company recommended "that 'everyone' with an estate over $50,000 should have a living trust.").

[45] The competency of non-lawyers to draft estate documents was questioned by Barlow F. Christensen in his article, The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors - Or Even Good Sense?, 1980 Am.B. Found. Res.J. 159 (1980). [Omission}

[46] B. Court Decisions

[47] [Omission] Courts have held that trust marketing companies and their employees practice law by advising and counseling clients that a specific type of estate plan or trust is needed and by preparing and drafting the necessary trust documents. Courts have found that attorneys participating in such schemes violate their ethical duties not to assist in the unauthorized practice of law and to avoid conflicts of interest. Courts also have noted actual harm to trust clients and the substantial fees charged. A brief summary of these decisions is in order.

[48] (i) Advising and Counseling

[49] All courts that have addressed the issue have held that non-lawyer trust salespeople render legal advice and engage in the unauthorized practice of law when they recommend living trusts to specific individuals.

[50] The thing that stands out like a mountain peak in all this accumulated mass of evidence is that business men are not lured into disposing of all control over their property, of embarking into unheard of schemes to escape personal liability, taxes, court costs, attorneys' fees, etc., until they are assured by some reputed expert that the whole novel plan has been time-tested and found legally water tight. It cannot be doubted that the inducement for the so-called 'purchases' of this 'service' was legal advice, nothing else, and it makes no difference . . . whether its representations were true or false.

[51] [Omission] (" lawyer must make the determination as to the client's need for a living trust and identify the type of living trust most appropriate for the client."); Comm. on Professional Ethics & Conduct of the Iowa State Bar Ass'n v. Baker, 492 N.W.2d 695, 703 (Iowa 1992) ("Whether a living trust is appropriate in a given case calls for the exercise of independent professional judgment by a lawyer."); Volk, 805 P.2d at 1118 ("The respondent admitted that counseling and sale of the living trusts by nonlawyers constituted the unauthorized practice of law.").

[52] [Omission]

[53] Even if the advice is termed as a "suggestion" or the client is encouraged to consult his own attorney, courts have still found that financial planners or insurance salespeople cannot advise a client as to his or her specific need for a particular form of Disposition without practicing law illegally. Oregon State Bar v. John H. Miller & Co., Inc., 235 Ore. 341, 385 P.2d 181, 183 (Or. 1963). "Whether the report takes the form of suggestions for further study or as a recommendation that the suggestions be subjected to further scrutiny by a lawyer, the fact remains that the client receives advice from defendants and the advice involves the application of legal principles. This constitutes the practice of law." 385 P.2d at 182.

[54] (ii) Drafting Documents

[55] Courts have also consistently held that the drafting and execution of trust documents for a fee by non-lawyers constitutes the unauthorized practice of law. The Florida Bar, 613 So. 2d at 427("The assembly, drafting, execution, and funding of a living trust document constitute the

practice of law."); Baker, 492 N.W.2d at 701 ("One who prepares legal instruments affecting the rights of others is practicing law."); [Omission]

[56] Ohio's Board of Commissioners on the Unauthorized Practice of Law has also forbidden unlicensed laypersons from drafting trust documents. [Omission] ("The trust agreements prepared by respondents, for a fee, significantly affect the legal rights of their clients" and therefore respondents' actions constitute the unauthorized practice of law.).

[57] (iii) Disciplinary Decisions

[58] Court decisions have not only ruled upon the propriety of non-lawyers engaged in trust marketing efforts, they have also focused upon the role of attorneys. Licensed attorneys participating in such schemes have been disciplined for assisting in the unauthorized practice of law and for creating a conflict of interest.

[59] [Omission]

[60] [Omission] However, attorneys who regularly receive referrals from trust marketing companies, without being directly employed by them, also have been found to suffer from a conflict of interest. An attorney's advice may be tainted by his desire to continue receiving referrals. [Omission]

[61] In Baker, a review attorney was disciplined for contracting away his independent judgment and becoming "merely a scrivener." Baker, 492 N.W.2d at 702. The non-attorney "controlled the whole process from the initial interview to the final meeting when the clients executed the documents in his office. He did so by recommending the living trust, the necessary tailored documents to effectuate it, and a lawyer who he believed would not counsel against his advice." Id.

[62] (iv) Inadequate Services and Fees

[63] [64] [65] [Omissions]

[66] At least one court has questioned the fees charged by the trust marketing companies. "Our experience with 'living trusts' teaches us that they may be a very poor substitute for probate. Unlike probate fees, the fees charged by nonlawyers . . . who tout living trusts are not subject to court scrutiny. Lack of court scrutiny can easily lead to unnecessary and excessive fees." Baker, 492

[67] C. State Ethics Opinions

[68] [70] [71] [72] [73] [Omissions]

[74] Rule 4-5.4(b) provides:

[75] [A lawyer shall not] assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

[76] [Omission portion] Concerns about the proper supervision of non-lawyer employees, as well as about competent representation, confidentiality of client information, and conflicts of interest are also raised by the proposed business. This business as planned would also violate prohibitions against solicitation of legal business by an agent, and giving value to another for recommending a lawyer's services."); Maryland Ethics Opinion 92-48 (7/22/92) (A lawyer may not accept employment from an estate planning corporation. "Here, the lawyer is not engaged to use his own judgment as to whether the revocable trust is appropriate for the client, but to modify sample forms and essentially to reinforce the estate planner's Conclusions regarding the client's needs. . . . Since the lawyer's services are being recommended by an entity that will be remunerated only if the lawyer performs the services, he is less likely to critically analyze the client's need for the services since the lawyer's own interests in maintaining a good relationship with the corporation will come into play. Additionally, the arrangement violates the prohibition against sharing legal fees with a non-lawyer."); [Omission]

[77] IV.

[78] The determination that Mid-America is engaged in the practice of law, or more technically, the "law business" as defined in 484.010.2, is beyond serious dispute. A brief review of the record supports each of the charges filed on this point.

[79] [80] [81] [Omissions]

[82] [Omission portion] The Ohio Board found that "the representative rather than an attorney determined whether the customer should have a living trust." 642 N.E.2d at 85.

[83] [Omission]

[84] In specific reference to 484.010.2, Mid-America advised and counseled clients regarding secular rights and law for a valuable consideration.

[85] 2. Mid-America Gathered Information From Individuals for Use in Determining What Type of Trust Was Appropriate for Those Individuals and Preparing Trust Documents.

[86] Merely gathering information for use in a legal document does not necessarily constitute the unauthorized practice of law. See Martin, 642 N.E.2d at 79; The Florida Bar, 613 So. 2d at 428. However, that is not all that the trust associates did here. The trust associates were required to help the clients fill out a workbook, a detailed questionnaire in which the client listed all their assets and made various legal choices. For instance, the client decided whether the durable power of attorney would be springing or immediate, which assets they wanted included in the trust, and who they wished to designate as trustee, executor, or guardian. [Omission]

[87] [Omission]

[88] the representatives not only gathered information but also provided advice to living trust customers relative to their individual legal rights and responsibilities in trust, estate, and tax matters. These representatives answered customers' legal questions about living trusts, estate planning, and tax matters. This advice was unlawful, although the representatives informed the customer to consult an attorney. 642 N.E.2d at 85.

[89] [90] [91] [92] [Omissions]

[93] V.

[94] 95] [96] [97] [98] [99] [100] [101] [102] [103] [104] [105] [106] [Omissions]

[107] [Omission portion] This Court found that the "mere perfunctory approval of supposedly disinterested counsel" does not cure the fact that interested non-lawyers had prepared trust documents and warned that participation in such a scheme by an attorney might endanger their license to practice in this state. 74 S.W.2d at 360.

[108] Second, participation by review attorneys in Mid-America's trust marketing businesses violates the rules of conduct for the legal profession and, therefore, cannot cure the unauthorized practice of law. See Rule 4-5.4(c); Rule 4-5.5(b). Recent opinions from Colorado, Iowa, and Ohio have confirmed that attorneys reviewing or drafting legal documents recommended or drafted by non-attorneys are aiding in the unauthorized practice of law or working with a conflict of interest.

[109] [110] [111] [112] [Omissions]

[113] Courts have even disciplined attorneys for aiding a non-lawyer in the unauthorized practice of law when the attorneys drafted the documents themselves. In Comm. on Professional Ethics & Conduct of the Iowa State Bar Ass'n v. Baker, 492 N.W.2d 695 (Iowa 1992), a certified financial planner recommended living trusts to Iowa residents, in hopes of being named and paid to fund the trust. Id. at 697. If the "clients" did not have an attorney to draft the trust documents, they were given a list of attorneys to consider and were told most clients chose Baker. Id. The Iowa Supreme Court disciplined Baker for aiding in the unauthorized practice of law and permitting a conflict of interest. Baker allowed the non-lawyer "to 'direct or regulate his professional judgment' in rendering legal services to the referred clients." Id. at 703 (citing DR 5-107(B)). The court found that "the prospect of receiving additional referrals constituted the 'compromising influences' mentioned in EC 5-1." Id; see also Comm. on Professional Ethics v. Matias, 521 N.W.2d 704, 707 (Iowa 1994) (Attorney unethically solicited business by allowing business cards to be distributed at living trust seminars.)

[114] [115] [Omissions]

[116] [Omission portion] Colorado Ethics Opinion 87 (1990) ("A lawyer may not participate in arrangements where non-lawyers are involved in the preparation and marketing of estate planning documents if the arrangements involve the unauthorized practice of law, fee-splitting or partnership with a non-lawyer, improper solicitation, compromised professional judgment, breach of confidentiality, or incompetent service. [Omission]

[117] Finally, although Mid-America claims to welcome independent review of its documents, it actually instructs its trust associates to avoid review by truly independent attorneys, and to encourage clients to choose an attorney from Mid-America's approved referral list. The Mid-America Training and Procedures Manual states:

[118] [119] [120] [121] [122] [123] [124] [125] [Omissions]

[126] Although Ms. Griesedieck cannot be commended for participating in Mid-America's marketing practices, she can be commended for her independent advice to her clients and for discontinuing her relationship with Mid-America. *fn5 It is significant to note that five of the six trusts that Mid-America's trust associates recommended, gathered information on, and accepted payment for, were not appropriate for the individual client.

[127] VI.
[128] [Omission]
[129] VII.
[130] [Omission]

[131] The focus of this type of proceeding is whether the unauthorized practice of law has occurred and whether the named parties have participated in the illegal activity. Through his authority as incorporator, president, 95 percent shareholder, and as a director of Mid-America, Mr. Dillie operated a business that engaged in the unauthorized practice of law. See □□ 351.310, 351.360. Further, Mr. Dillie directly participated in the activities of Mid-America. Mr. Dillie made the initial contact with prospective trust associates; he was in charge of many of the seminars marketing the trusts and, despite a written price schedule, "Mr. Dillie is the one that really sets the prices" for the trusts, according to Mid-America's trust production supervisor.

[132] Corporate officers, particularly those owning 95 percent or more of the stock, may not hide behind the corporate form to evade compliance with law or their responsibility when the law is broken. See Schnucks Twenty-Five, Inc., v. Bettendorf, 595 S.W.2d 279, 289 (Mo. App. 1979). This is especially so if they participated in the evolution of the wrongdoing. Rodgers v. Richmond Memory Gardens, Inc., 896 S.W.2d 64, 69 (Mo. App. 1995); Honigmann v. Hunter Group, Inc., 733 S.W.2d 799, 807 (Mo. App. 1987); Boyd v. Wimes, 664 S.W.2d 596, 598 (Mo. App. 1984).

[133] VIII.

[134] Accordingly, we modify the recommendations of the Master and order that:

[135] 1. Mid-America and its non-lawyer agents, servants, employees, and trust associates cease soliciting, counseling, recommending, and selling trusts, wills, and all other legal instruments, for valuable consideration, to Missouri residents *fn6

[136] 2. Mid-America and its non-lawyer agents, servants, employees and trust associates cease drawing, preparing, or assisting in the preparation of trust workbooks, trusts, wills, and powers

of attorney, for valuable consideration, for Missouri residents without the direct supervision of an independent licensed attorney selected by and representing those individuals; and

[137] 3. Robert Dillie is enjoined from operating Mid-America, or any other form of business, or from aiding or assisting any other individual or form of business entity, in violation of the terms of this opinion and order.

[138] 4. Costs are assessed to Respondents.

[139] William Ray Price, Jr., Judge

[140] All concur.

[141] [SEE EXHIBIT C IN ORIGINAL

Opinion Footnotes

[142] *fn1 All statutory citations are to Missouri Revised Statutes, 1994.

[143] *fn2 In terms of these statutory definitions, the question presented is whether respondents have engaged in "law business". Other jurisdictions often use the term "practice of law" more inclusively than defined by 484.010.1, and unless otherwise indicated, we also use the term "practice of law" to include "law business".

[144] *fn3 U.S. senators, state attorneys general offices, the National Council of the American Association of Retired Persons (AARP), the Federal Trade Commission, the

American Bar Association, and a branch of the Better Business Bureau have openly criticized trust marketing companies, especially for targeting the elderly.

[145] *fn4 Even if this type of conflict can be waived, an issue which we specifically reserve, the conflict waiver signed by Mid-America's clients is ineffective because the record does not reflect that it was given after consultation and full disclosure of the potential risks. Rule 4-1.7; State v. Ross, 829 S.W.2d 948, 952 (Mo.banc 1992).

[146] *fn5 The record does not reveal whether the clients' money was refunded by Mid-America.

[147] *fn6 The parties have not addressed whether employees of Mid-America may provide these services to individuals residing outside of Missouri and we reserve this issue.

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